IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC.,[1]	)	Case No. 24-11217 (BLS)
Liquidating Debtor.	)	
	)	**Re: Docket No. 851**
	)	**Hearing Date: TBD**

PLAN ADMINISTRATOR'S OMNIBUS OBJECTION TO (I) REQUEST BY HARTFORD FIRE INSURANCE COMPANY TO ALLOW AND REQUIRE PAYMENT OF AN ADMINISTRATIVE EXPENSE CLAIM AND (II) PROOFS OF CLAIM FILED BY HARTFORD FIRE INSURANCE COMPANY

David M. Barse, solely in his capacity as the Plan Administrator of Vyaire Medical, Inc., *et al.* (the "Plan Administrator"), appointed pursuant to the *Second Amended Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. 719] (the "Plan"), which was confirmed by the Order of the United States Bankruptcy Court for the District of Delaware (the "Court") on November 14, 2024 [Docket No. 745] (the "Confirmation Order"), hereby files this omnibus objection (the "Objection") to the *Request by Hartford Fire Insurance Company to Allow and Require Payment of an Administrative Claim* [Docket No. 851] (the "Motion"),[2] proof of claim number 25 filed against Debtor Vyaire Medical 211, Inc. ("Claim No. 25") and proof of claim number 184 filed against Debtor Vyaire Medical, Inc. ("Claim No. 184", and together with Claim

[1] This chapter 11 case is now being administered by the Plan Administrator pursuant to the terms of the *Findings of Fact, Conclusions of Law, and Order Approving the Debtors' Disclosure Statement for, and Confirming the Second Amended Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 745] (the "Confirmation Order"). The Plan Administrator's mailing address is Vyaire Medical, Inc., Attn: David M. Barse, Plan Administrator, c/o Cole Schotz P.C., 500 Delaware Avenue, Suite 600, Wilmington, DE 19801.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Confirmation Order or the Plan, as applicable.

No. 25, the "Proofs of Claim") filed by Hartford Fire Insurance Company ("Hartford"). In support of the Objection, the Plan Administrator respectfully represents as follows:

PRELIMINARY STATEMENT

Hartford asserts that it can write itself a "blank check" for legal fees it incurred in protecting its own rights in the Debtors' bankruptcy cases, including fees for asserting a right to legal fees and any disputes as to those fees. On that premise, Hartford filed an unsupported administrative claim against the Debtors in the amount of at least $28,206.83.[3] In support, Hartford relies on indemnity rights in the indemnity agreements entered into prior to the Petition Date related to surety bonds issued to the Debtors. The Motion for allowance and payment of an administrative claim should be denied for two reasons. First, any indemnity claims for attorneys' fees or otherwise are prepetition claims under applicable law. Second, even if the claims were considered to be post-petition, the Debtors received *no benefit* from attorneys' fees incurred by Hartford in the bankruptcy cases, let alone, an actual and necessary benefit.

Additionally, Hartford filed the Proofs of Claim asserting secured claims against Debtors Vyaire Medical, Inc. and Vyaire Medical 211, Inc., but did not include any documentation to support such secured claim. The Debtors ceased doing business and using the bonds on the Effective Date of the Plan (i.e., November 27, 2024), at the latest. The Plan administrator is not currently aware of any remaining potential claims against Hartford's surety bond, and based on a review of the Debtors' books and records, the Plan Administrator is not currently aware of the existence of any collateral which would support a right to any secured claim if such a claim did

[3] The Motion "asserts an administrative expense claim for not less than $28,206.83." Motion ⁋ 16. Thus, the total amount of the asserted Administrative Claim (as defined below) remains unclear. For the reasons set forth below, the Plan Administrator objects to any administrative claim asserted by Hartford. To the extent additional amounts are asserted, the Plan Administrator reserves all rights to supplement this Objection.

exist. Accordingly, the Proofs of Claim should be reclassified to nonpriority general unsecured claims.

For the reasons identified above, and as set forth in more detail below, the Court should deny the Motion and reclassify the Proofs of Claim to nonpriority general unsecured claims.

BACKGROUND

I. General Background

1. On June 9, 2024 (the "Petition Date"), Vyaire Medical, Inc. and its affiliated debtors (collectively, the "Debtors") each commenced a voluntary case under title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") with the Court.

3. On November 14, 2024, the Court entered the Confirmation Order approving the Plan.

4. The Confirmation Order provides, in relevant part:

> "Notwithstanding anything to the contrary in the Plan or the Confirmation Order and any related documents, on the Effective Date, any rights, claims and obligations, including without limitation, trust and/or subrogation rights arising under any surety bonds issued by Hartford Fire Insurance Company (the "Surety") *shall continue in full force and effect* including, to the extent applicable, the following: (a) any indemnity agreement or related instruments issued and/or executed on behalf of or at the request of any of the Debtors in favor of Surety; (b) any funds the Surety or any bond beneficiary is holding and/or that are being held for or for the benefit of the Surety or any bond beneficiary presently or in the future, whether in trust, as security, or otherwise; (c) any substitutions or replacements of said funds including accretions to and interest earned on said funds; (d) any collateral being held by any bond beneficiary or letter of credit, related to any indemnity, collateral trust, bond, arrangement, contract or other agreements between or involving the Surety and any of the Debtors; (e) any rights, remedies and/or defenses the Surety may now or in the future have with respect to any and all bonds and/or related instruments issued and/or executed by the Surety on behalf of any of the Debtors; and (f) current or future setoff and/or recoupment rights and/or lien rights and/or trust fund claims of the Surety or any party to whose rights the Surety has or may be subrogated, and/or any existing or future subrogation or other common law rights of the Surety."

Confirmation Order ¶ 113 (emphasis added).

5. On November 27, 2024 (the "Effective Date"), the Plan became effective in accordance with its terms [Docket No. 810].

6. On the Effective Date, David M. Barse, in his capacity as Plan Administrator, became the sole representative of the Debtors' estates for the purpose of, *inter alia*, reconciling claims filed against the Debtors' estates and facilitating distributions in accordance with the Plan. *See* Plan, Art. IV.E, VII.

7. On January 25, 2025, the Court entered a *Final Decree Closing Certain Cases* [Docket No. 974], *inter alia*, closing all cases other than the above-captioned case and authorizing that relief in connection with any of the Debtors be filed in the above-captioned case.

8. On February 11, 2025, the Court entered an *Order Approving the Plan Administrator's (I) First Motion to Extend the Claims Objection Deadline and (II) Second Motion to Extend the Administrative Claims Objection Deadline* [Docket No. 1074], pursuant to which the (i) Claims Objection Deadline was extended through and including November 24, 2025, (ii) Administrative Claims Objection Bar Date was extended through and including August 25, 2025, and (iii) deadline to respond to any motions or requests for payment of an administrative claim was extended through and including August 25, 2025.

II. The Surety Bonds and Indemnity Agreements

9. Prior to the Petition Date, Hartford issued certain Bonds on behalf of certain of the Debtors. *See* Motion ¶ 2-3.

10. In connection with the issuance of the Bonds, in 2018 and 2020, certain of the Debtors and Hartford entered into the Indemnity Agreements. *See* Motion, Exs. A, B.

11. The Indemnity Agreements provide, among other things, that certain of the Debtors, and any of their non-debtors affiliates, are contractual indemnitors and, as such, they are, among other things, jointly and severally liable to Hartford for certain liabilities (i) "arising out of

or related to underwriting any Bond" (2020 Indemnity Agreement) and (ii) "in connection with or by reason of furnishing any bond hereunder." *See* Motion, Exs. A, B.

III. Hartford's Motion and the Proofs of Claim[4]

12. On September 27, 2024, Hartford filed Claim No. 25 asserting a secured claim against Debtor Vyaire Medical 211, Inc. for a contingent/unliquidated claim in an unknown amount. *See* Ex. 1. Also on September 27, 2024, Hartford filed Claim No. 184 asserting a secured claim against Debtor Vyaire Medical, Inc. for a contingent/unliquidated claim in an unknown amount. *See* Ex. 2. Hartford alleged that the basis of the Proofs of Claim was the Bonds and Indemnity Agreements. *Id*. Hartford did not provide any documents or specific basis to support how or whether any claims were secured. *Id*. In addition, the Plan Administrator has reviewed the Debtors' books and records and to the best of his knowledge, he is not aware of any collateral which would support a secured claim as asserted by Hartford.

13. Separately, prior to and during the bankruptcy case, the Debtors worked with its U.S. Customs broker in funding any obligations related to the importation of products into the United States. Generally, the broker estimates the costs, the Debtors pay those costs, and thereafter the port of entry confirms and processes the payment to ensure there was not an overpayment or underpayment. As of the Petition Date, there were more than 1,200 entries for processing. On July 25, 2025, U.S. Customs and Border Protection filed an amended proof of claim indicating that the entries had been reduced to less than 100. It is expected that number will be reduced to less than 60 after August 8, 2025. To date, based on the estimated payments made, the Debtors have not

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[4] A copy of Claim No. 25 is attached hereto as **Exhibit 1**, and a copy of Claim No. 184 is attached hereto as **Exhibit 2**.

been required to fund any additional amounts for products related to the U.S. Customs Bond. Thus, any remaining potential liability is limited at best.

14. On December 23, 2024, Hartford filed the Motion seeking, among other things, allowance and payment of an administrative expense claim in the amount of at least $28,206.83 (the "Administrative Claim") for unreimbursed fees and costs incurred by the Surety between the Petition Date and Effective Date pursuant to the terms of the Indemnity Agreements. Motion ⁋ 16.

15. The Debtors effectively ceased any meaningful operations following the closing of the sale of its respiratory diagnostics business on November 12, 2024 to Trudell Medical Limited ("Trudell"). The Debtors ceased use of the Bonds on the Effective Date of the Plan, at the latest. Between the Effective Date and the filing of the Administrative Claim, the Plan Administrator discussed the Bonds with counsel for Hartford and indicated that the Debtors had no ongoing need for the Bonds, and any additional use was for the benefit of the buyers of the Debtors' businesses. The Plan Administrator thereafter connected counsel for Hartford with counsel for Trudell to discuss any continued use of the Bonds.

16. The Plan Administrator is not aware of any benefit provided to the Debtors' estates for the attorney fees asserted by Hartford in the Administrative Claim.

OBJECTION

17. The Plan Administrator objects to the Motion and Proofs of Claim for the following reasons.

A. Hartford's Asserted Claims are Prepetition Claims

18. Courts generally hold that claims arising under a prepetition agreement which later accrue post-petition are deemed to have arisen prepetition. *See In re Malinckrodt PLC*, 99 F.4th 617, 621 (3d Cir. 2024) ("[M]ost contract claims arise when the parties sign the contract."); *see also In re Manville Forest Prods. Corp.*, 209 F.3d 125, 129 (2d Cir. 2000) ("Under contract law,

a right to payment based on a written indemnification contract arises at the time the indemnification agreement is executed."); *Ogle v. Fid. & Deposit Co. of Maryland*, 586 F.3d 143, 146 (2d Cir. 2009) (holding that, where a prepetition contract allowed for recovery of attorneys' fees and the relevant attorneys' fees were accrued post-petition, contract counterparty had "a contingent right to post-petition attorneys' fees, and that its right arose pre-petition").

19. More specifically, this Court has held that indemnity claims arising post-petition from prepetition contracts are deemed to have arisen prepetition and are thus not entitled to administrative expense priority under section 503(b)(1)(A). *See In re Pinnacle Brands, Inc.*, 259 B.R. 46, 51 (Bankr. D. Del. 2001) (finding that claimant "does not have two separate claims, one pre-petition and one post-petition. Rather it has one claim, with two separate legal theories…we conclude that [claimant's] claim which is premised on theories that could be asserted in both a pre-petition and post-petition suit, is nonetheless a pre-petition claim."); *In re ANC Rental Corp.*, 341 B.R. 178, 181 (Bankr. D. Del. 2006) (holding that the claim arose when the contract was executed).

20. The holdings in *Pinnacle* and *ANC Rental* are instructive and applicable here. Hartford's Administrative Claim is entirely premised upon its rights under the prepetition Indemnity Agreements. Thus, its indemnity claims, including any claim or contingent claim for attorneys' fees, arose prepetition when the Indemnity Agreements were executed. Hartford's claims are nothing more than nonpriority general unsecured claims.

B. Hartford Cannot Meet the Burden of Proof to Establish Entitlement to an Administrative Expense Claim

21. Even if Hartford could overcome the prepetition nature of its claim, it cannot meet the burden of establishing a right to an allowed administrative expense claim under applicable law.

22. Section 503(b)(1) of the Bankruptcy Code provides in relevant part that:

> (b) after notice and a hearing, there shall be allowed, administrative expenses…including –
>
> (1)(A) the actual, necessary costs and expenses of preserving the estate. …

11 U.S.C. § 503(b)(1).

23. Section 503(b)(1) allows for the collection of administrative expenses from a bankruptcy estate with first priority in distribution of the assets of a debtor. *In re Hechinger Inv. Co. of Delaware*, 298 F.3d 219, 224 (3d Cir. 2002). As such, it is intended to limit priority to solely those claims that are truly actual and necessary to avoid "the estate being consumed by administrative expenses" and to "preserve[] the estate for the benefit of creditors." *In re Marcal Paper Mills, Inc.,* 650 F.3d 311, 315 (3d Cir. 2011).

24. In interpreting Section 503(b)(1), the Third Circuit has held that to qualify for administrative priority, the claimant has the heavy burden of establishing that the expenses need to both (1) arise from a post-petition transaction with the debtor and (2) be beneficial to the debtor in the operation of its business. *Marcal Paper Mills,* 650 F.3d at 314-15; *In re O'Brien Env't Energy, Inc.*, 181 F.3d 527, 533 (3d Cir. 1999). In addition, the Third Circuit has further explained that the benefit "must be *actual*, not hypothetical." *In re Energy Future Holdings Corp.*, 990 F.3d 728, 742 (3d Cir. 2021). Hartford fails to meet both requirements.

25. *First,* the claim is entirely based upon the Indemnity Agreements executed by certain of the Debtors prepetition, and not a post-petition transaction. In assessing administrative claims, courts look to when the acts giving rise to a liability took place, not when they accrued. *In re M Grp., Inc.,* 268 B.R. 896, 901 (Bankr. D. Del. 2001). More specifically, the transactions which give rise to a contractual indemnity claim, including contingent claims, arise when the contract is executed. *Pinnacle,* 259 B.R. at 51-52 ("The Debtors and Huhtamaki did not enter into a post-petition transaction. The basis of Huhtamaki's contractual claim is the contract…which

was executed prepetition…Thus, the first prong, a postpetition transaction between the Debtors and Huhtamaki is absent here.”). *Pinnacle* is directly on point and makes clear that the operative date is the date of contract execution irrespective of whether actions occur post-petition which later give rise to an indemnity right under the agreement.

26. The Indemnification Agreements were signed *years* before the Petition Date. Accordingly, there was no post-petition transaction between Hartford and the Debtors, and Hartford is not entitled to allowance of the Administrative Claim.[5] On this basis alone, the Motion should be denied.

27. *Second,* Hartford provided no evidence whatsoever to support how the attorneys' fees it incurred for its own representation and protection of its rights in the bankruptcy cases meet the "heavy burden" of providing an "actual" and "necessary" benefit to the Debtors. This Court has routinely denied motions seeking allowance of an administrative expense where no benefit was conferred upon a debtor. *See e.g., In re Bernard Techs., Inc.*, 342 B.R. 174 (Bankr. D. Del. 2006) (denying creditors' request for administrative claim where debtor did not benefit from expenses); *In re Insilco Techs., Inc.*, 309 B.R. 111, 116 (Bankr. D. Del. 2004) (same); *In re Exide Techs.*, 601 B.R. 271, 288 (Bankr. D. Del. 2019) (same).

28. The Debtors paid a premium for the use of the Bonds. The Administrative Claim is more than five (5) times that premium. Allowing the Administrative Claim under these circumstances is highly inequitable and exactly what the Third Circuit cautioned against in *Marcal Paper Mills.* 650 F.3d at 315 (holding that administrative claims should be scrutinized to avoid an "estate being consumed by administrative expenses" and to preserve value for the benefit of all

[5] To the extent that Hartford asserts that post-petition attorney services were a "transaction" with the Debtors, that is factually incorrect. The Debtors had no post-petition agreement with Hartford or its counsel, and any legal services were being provided to and for the benefit of Hartford, and not the Debtors.

creditors). Hartford should not be allowed to run up a legal bill for its own representation, which the Debtors have no control over, and then require the Debtors' estate to foot the bill.

29. Lastly, to the extent Hartford relies on language in the Confirmation Order to support its claims, that argument also fails. Initially, Hartford seeks relief under section 503(b) of the Bankruptcy Code, and not under any Court order. In addition, the plain language of the Confirmation Order merely preserves Hartford's rights under the Indemnity Agreements as they existed on the Petition Date. This did not create a new transaction with the Debtors, award Hartford an allowed administrative claim, or award Hartford any right to post-petition attorneys' fees.

30. Based on the above, the Motion should be denied.

C. The *Reading* Doctrine Does Not Give Rise to an Administrative Priority Claim

31. Hartford's argument that the *Reading* Doctrine should apply to entitle the Administrative Claim to administrative treatment is also unpersuasive and misreads *Reading's* holding. There, the Supreme Court held that "fundamental fairness" may entitle a *tort claimant* to an administrative claim. *In re Phila Newspapers, LLC*, 690 F.3d 161, 173 (3d Cir. 2012) (citing *Reading Co. v. Brown*, 391 U.S. 471, 477 (1968)). To the extent a claimant cannot demonstrate allegations to support a tort claim, the *Reading* Doctrine does not give rise to an administrative expense claim under Section 503(b)(1). *In re Lucky's Mkt. Parent Co.*, 2021 WL 1100066, at * 12 (Bankr. D. Del. Mar. 17, 2021) (holding that claimant "is unable to prove the existence of any tort that would give rise to an administrative expense claim under the *Reading* Doctrine and is therefore not entitled to an administrative expense claim under § 503(b)(1)"). Hartford does not allege any tort claims against the Debtors, and the *Reading* Doctrine does not apply.

D. Hartford's Proof of Claims Should Be Reclassified to Nonpriority General Unsecured Claims

32. When asserting a proof of claim against a bankrupt estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. *See In re Energy Future Holdings*, 2016 WL 4925052, at *3 (D. Del. Sept. 14, 2016) ("The initial burden is on the claimant to allege sufficient facts to support the claim"); *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d. Cir. 1992). Where the claimant alleges sufficient facts to support its claim, its claim is afforded *prima facie* validity. *See Allegheny Int'l*, 954 F.2d at 173. A party wishing to dispute such a claim must produce evidence in sufficient force to negate the claim's *prima facie* validity. *See Energy Future Holdings*, 2016 WL 4925052, at *3 ("The objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency"); *see also* 11 U.S.C. § 502(a); FED. R. BANKR. P. 3001(f).

33. A claim, however, should not be allowed if that claim is unenforceable against a debtor and property of a debtor, under any agreement or applicable law. *See* 11 U.S.C. § 502(b)(1). If an objection is made to the proof of claim, the claimant has the ultimate burden of persuasion as to the validity and amount of the claim. *See Allegheny Int'l*, 954 F.2d at 172. Hartford has failed to meet its burden or set forth sufficient evidence or information to support its entitlement to a "secured" claim against the Debtors.

34. As discussed above, Hartford asserted the Proofs of Claim premised on the Bonds and Indemnity Agreements, including any subrogation rights which may arise thereunder. The claim is entirely contingent on potential liability which may arise from the Debtors' prior use of the Bonds. The Plan Administrative is not currently aware of any claim or potential claim against the Bonds.

35. In addition, the Proofs of Claim did not include any evidence of any collateral which may give rise to a secured claim. Based on the Plan Administrator's review of the Debtors' books and records, the Plan Administrator is not aware of any collateral which may support Hartford's right to a secured claim if any such claim did come into existence. Therefore, the Proofs of Claims should be reclassified to nonpriority general unsecured claims.

RESERVATION OF RIGHTS

36. The Plan Administrator hereby reserves the right to amend, modify, and supplement this Objection prior to the hearing on the Motion, if any; *provided, however*, that nothing in this Objection shall affect the Plan Administrator's right to object to the claims at a future date on a basis other than as set forth in this Objection as permitted by bankruptcy and nonbankruptcy law, subject to any limitations set forth in the Local Rules or in the Order.

CONCLUSION

WHEREFORE, the Plan Administrator respectfully requests that the Court enter an order (i) denying the Motion, (ii) reclassifying the Proofs of Claim to nonpriority general unsecured status and (iii) granting such other relief as the Court may deem just and proper.

Dated: August 8, 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

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